COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals**

**1 Congress Street, 11th Floor**

**Boston, MA 02114**

**www.mass.gov/dala**

**James Holland**,

Petitioner

v. Docket No. CR-13-538

**Malden Retirement Board**,

Respondent

**Appearance for Petitioner**:

Patrick P. MacDonald, Esq.

Law Offices of Christopher G. Fallon

15 Ferry Street

Malden, MA 02148

**Appearance for Respondent**:

Christopher J. Collins, Esq.

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**Administrative Magistrate**:

Kenneth Bresler

**SUMMARY OF DECISION**

Retirement Board’s decision not to refer an application for accidental disability retirement benefits to a medical panel is affirmed because the applicant returned to work on the day that his knee injury supposedly disabled him; he could not specify when his knee injury or blood pressure supposedly disabled him; and if it were true, as he testified, that his blood pressure supposedly disabled him one-and-one-half years or one year before he stopped collecting his salary, but he went to the office without fully performing his duties, he implicitly violated Chapter 32 of the General Laws.

**DECISION**

 The petitioner, James Holland, appeals the decision of the Malden Retirement Board not to refer his application for accidental disability retirement benefits to a regional medical panel.

 I held a hearing on December 9, 2015, which I recorded digitally. The Malden Retirement Board had the recording transcribed. Mr. Holland was the only witness. I have accepted into evidence five exhibits, three for Mr. Holland, two for the Malden Retirement Board. Both parties submitted post-hearing briefs.

**Findings of Fact**

 1. Mr. Holland worked for the Malden Police Department from 1975 to 2013. He was the police chief for his last three years. (Testimony.)

 2. Mr. Holland had a three-year contract as police chief. It ran from March 10, 2010 through March 9, 2013. (Resp. ex. 1.)

 3. The contract required Mr. Holland to “devote the amount of time and energy which is reasonable and necessary” for him “to faithfully perform the duties of Chief of Police….” It required him to be “available twenty-four (24) hours per day, seven (7) days per week, as needed.” (Resp. ex. 1.)

 4. The contract provided that Mr. Holland

may continue to accumulate and be compensated for sick days in accordance with either of the Police Department’s collective bargaining agreements. At termination or retirement, [Mr. Holland] will be paid in accordance with the plan or his accumulated sick leave.

(Resp. ex. 1.)

 5. The contract required that changes or modifications to it be in writing to be valid. (Resp. ex. 1.)

 6. Mr. Holland retired from the Malden Police Department on March 9, 2013. He was paid $3,430 for accumulated sick leave. (Resp. ex. 1.)

 7. On September 5, 2013, Mr. Holland applied for accidental disability retirement benefits. (Pet. ex. 1.)

 8. The medical reasons that Mr. Holland cited on his application were “Malignant hypertension; Diastolic dysfunction – heart failure; bi-lateral knee injuries.” (Pet. ex. 1.)

 9. On his application, Mr. Holland listed knee injuries on February 5, 2003 and January 7, 2013. He also listed “on or about 3/1/13 for claim pursuant to M.G.L. Ch. 32 Sec. 94,” apparently referring to his high blood pressure. (Pet. ex. 1, pp. 5, 6.)

 10. On his application, Mr. Holland wrote that he ceased being able to perform all essential duties of his position on January 7, 2013 (Pet. ex. 1), which was also the date that he injured his knees.

 11. On January 7, 2013, after slipping on ice and injuring his knees, Mr. Holland returned to full active duty. (Tr. 21; Pet. ex. 1, p. 47.)

 12. On January 14, 2014, one week after he injured his knees, Dr. John J. Lynch wrote,

He may continue with the supervisory work activities as a chief with some restrictions on prolonged walking, standing, climbing or stooping.

(Pet. ex. 1, p. 52.)

 13. On June 7, 2013, Dr. David Pladziewicz signed a Treating Physician’s Statement for Mr. Holland. (Pet. ex. 1, p .22.)

 14. On the Treating Physician’s Statement, Dr. Pladziewicz listed Mr. Holland’s diagnosis as “Malignant Hypertension / Diastolic Dysfunction – Heart Failure.” He wrote that a blood pressure test had confirmed the diagnosis; Mr. Holland was last able to perform his essential duties on March 1, 2013; and Mr. Holland needed to “Avoid Stress” and “Significant Exertion.”

(Pet. ex. 1, p. 20.)

 15. On or before March 5, 2013, another doctor, Dr. David F. Tee, filled in another Treating Physician’s Statement.[[1]](#footnote-1) He diagnosed Mr. Holland’s conditions as hypertension, sleep apnea, tremors, and obesity. Dr. Tee left the date blank, but the fax line on the top of the page shows that it was faxed on March 5, 2013. (Pet. ex. 1, pp. 31, 33.)

 16. Dr. Tee did not fill in the date when Mr. Holland was last able to perform his essential duties. (Pet. ex. 1, p. 31.)

17. On July 18, 2013, Dr. Lynch filled in still another Treating Physician’s Statement, this one relating to Mr. Holland’s alleged knee injury. (Pet. ex. 1, pp. 36-45.)

18. Dr. Lynch attached a letter to the statement, asserting that Mr. Holland was last able to perform his essential duties on March 10, 2013[[2]](#footnote-2) (Pet. ex. 1, p. 43). (Dr. Lynch is the doctor who examined Mr. Holland a week after he injured his knees in 2013 and wrote, “He may continue with the supervisory work activities as a chief with some restrictions….”)

19. On October 15, 2013, the Malden Retirement Board informed Mr. Holland that it would not process his application. The reason was that Mr. Holland had claimed that he had last been able to perform his duties on January 7, 2013 but had remained a full-time active employee through March 9, 2013. (Pet. ex. 2.)

 20. On October 29, 2013, Mr. Holland timely appealed. (Pet. ex. 3.)

**Discussion**

 The problems with Mr. Holland’s application are many and convoluted. I’ll first discuss his claim regarding his knees.

 Mr. Holland claims that his knees kept him from being able to perform the essential duties of his job on two conflicting dates, January 7, 2013, which he provided in his application for accidental disability retirement benefits, and March 10, 2013, which he provided by attaching to his application a physician’s statement by Dr. Lynch. Mr. Holland’s inability to specify a date when his knees precluded him from performing his essential duties (1) throws into doubt his claim that he suffered a disabling injury to his knees and (2) does not comply with the law. A claim for accidental disability retirement benefits requires an applicant to specify that became disabled “at some definite time.” G.L. c. 32, § 7(1).

In addition, both dates standing alone are problematic. January 7, 2013, the date that he injured his knees, is also the date that he returned to full active duty. (Tr. 21; Pet. ex. 1, p. 47.) Therefore, his injury could not have disabled him on that date. March 10, 2013 is the day *after* Mr. Holland stopped working. Therefore, he was not disabled on the last day of his work, as required by *Vest v. Contributory Retirement Appeal Board*, 41 Mass. App. Ct. 191, 194 (1996) (“an employee who has left government service without an established disability may not, after termination of government service, claim accidental disability retirement status on the basis of a subsequently matured disability.”) March 10, 2013 is also the first day after the end of Mr. Holland’s contract, additionally throwing into doubt his claim that he was disabled due to his knees as of that date.

 Mr. Holland’s application for accidental disability retirement benefits related to his knees cannot proceed as a matter of law, 840 CMR 10.09(2), and the Malden Retirement Board was justified in not referring Mr. Holland’s application to a medical panel for his knees.

 As for Mr. Holland’s claim regarding his blood pressure, he wrote on his application that he was last able to perform the essential duties of his job on January 7, 2013 (Pet. ex. 1, p. 2), but also that his high blood pressure disabled him “on” March 1, 2013 *and* “on or about” March 1, 2013. (Pet. ex. 1, pp. 5, 6, 20.) It is unclear what Mr. Holland is claiming: His knees disabled him on January 7, 2013 and that his blood pressure disabled him on or about March 1, 2013?

Mr. Holland’s testimony muddied an already muddled situation. He testified that his “acute hypertension” kept him from performing all essential duties of his position “halfway” through his term (Tr. 17, 18), that is, around September 2011. He also testified that he couldn’t specify a date when he became incapable of performing all essential duties of his position, but that it occurred around “halfway” or “two-thirds of the way through” his contract. (Tr. 20.) Two thirds of the way through his contract was around March 2012. Thus, Mr. Holland became disabled

 • in approximately September 2011, according to his testimony (Tr. 17, 18);

 • in approximately March 2012 or sometime between approximately September 2011 and approximately March 2012, also according to his testimony (Tr. 20);

• on January 7, 2013, according to his application (Pet. ex. 1, p. 2);

• on March 1, 2013, according to his application and Dr. Pladziewicz’s statement (Pet. ex. 1, p. 6, 20);

• on or about March 1, 2013, according to his application (Pet. ex. 1, p. 5); or

• on an unspecified date, according to Dr. Tee’s statement. (Pet. ex. 1, p. 31.)

As with his knees, Mr. Holland’s inability to specify a date when his high blood pressure precluded him from performing his essential duties (1) throws into doubt his claim that his blood pressure disabled him and (2) does not comply with the statutory requirement that he specify that became disabled “at some definite time.” G.L. c. 32, § 7(1).

 Mr. Holland’s application for accidental disability retirement benefits related to his blood pressure cannot proceed as a matter of law, 840 CMR 10.09(2), and the Malden Retirement Board was justified in not referring Mr. Holland’s application to a medical panel for this supposed disability.

Furthermore, to accept any of the dates or approximate dates when Mr. Holland’s blood pressure supposedly precluded him from performing all of his essential duties would mean that Mr. Holland collected full pay while not performing all of his duties. Even if Mr. Holland could not perform all of his essential duties as of March 1, 2013, his last day of work – or at least the last day he was paid under his contract – was eight days later, March 9, 2013. (Mr. Holland said that he spent the last week of his contract cleaning out his office. (Tr. 26-27.))

Mr. Holland testified that for between one and one-and-one-half years, he went to his job, but did not fully work. He did not tend to “day-to-day…stressful situations” and attend meetings that he was required to attend, which “were just getting overwhelming.” (Tr. 18-20.) When his own lawyer asked him,

How were you able to *get around* performing your essential duties and *nevertheless* remain at your post or position until your retirement date?

he answered that he delegated to a police lieutenant; one of four captains; the police commissioner, who was a superior; “and a few other people.” (Tr. 19)(emphasis added.) He engaged in “a little bit of…slight [sic] of hand, so to speak.” (Tr. 24.) He put himself on “[s]elf-imposed light duty.” (Tr. 21.) When asked if he was collecting pay for a job he was not qualified to perform, Holland answered, “Essentially yes.” (Tr. 25.)[[3]](#footnote-3)

 If Mr. Holland is to be believed that he was disabled between one and one-and-one-half years before he retired, then he seeks accidental disability retirement benefits under one statute, G.L. c. 32, § 7, while he did the following: created self-imposed light duty, which no statute authorizes; did not apply for a benefit under another statute, G.L. c. 41, § 111F (“Whenever a police officer…is incapacitated for duty because of injury sustained in the performance of his duty without fault of his own…is so incapacitated because of injuries so sustained, he shall be granted leave without loss of pay for the period of such incapacity….”); and evaded still another statute, G.L. c. 32, § 5B, which provides in part:

Every employer in the commonwealth who employs persons who are members of a retirement system…shall establish…an early intervention plan. …Said plan shall be designed to implement programs and procedures that will effectuate the delivery of a coordinated employee assistance program…for injured members; to provide educational programs designed to encourage workplace safety; and to identify hazards for the employer’s attention. The goal of the plan shall be to limit the retirement system’s liability for disability benefits by ensuring the continued employment of injured members through medical and vocational rehabilitation, reasonable accommodation of injured workers, and a safer workplace.

G.L. c. 32, § 5B(a).

In addition, by granting himself unofficial light duty, Mr. Holland preserved his sick leave and received compensation for it when he retired. If Mr. Holland receives superannuation retirement benefits, and assuming that his salary as a police chief was higher than his salary before then, then Mr. Holland, by continuing to collect his salary when he was not fully working, received three full years of a higher salary and increased his potential superannuation benefits. G.L. c. 32, § 5(2)(a). Mr. Holland’s self-imposed light duty was an implicit violation of G.L. c. 32, §§ 7, 5(2)(a), and 5B. For this reason, the Malden Retirement Board was additionally justified in not referring Mr. Holland’s application to a medical panel for his blood pressure.

 I do not find factually whether Mr. Holland became unable to perform his essential duties one-half or two-thirds of the way through his contract, on one hand, or on the other hand, was able to perform his essential duties throughout his three-year contract and applied for accidental disability retirement benefits only when his contract ended. (Mr. Holland testified that as a third-generation police officer, he wanted to finish his contract. (Tr. 19.)) In either case, he was not eligible for accidental disability retirement benefits, and I affirm the Malden Retirement Board’s decision not to refer his application to a medical panel.

 Mr. Holland’s legal position seems to be: Just let him proceed to a medical panel and see what happens. Because Mr. Holland cannot prevail as a matter of law, 840 CMR 10.09(2), I see no point in a medical panel examining Mr. Holland.

**Conclusion and Order**

An applicant for accidental disability retirement returned to work on the day that his knee injury supposedly disabled him; thus, it did not disable him. He could not specify when his knee injury or blood pressure supposedly disabled him. And if his testimony were true, he collected his salary as police chief for between one and one-and-one-half years without fully performing his duties, thus implicitly violating Chapter 32 of the General Laws. For all these reasons, the decision of the Malden Retirement Board not to refer his application to a regional medical panel is affirmed.

 DIVISION OF ADMINISTRATIVE LAW APPEALS

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 Kenneth Bresler

 Administrative Magistrate

Dated: April 1, 2016

1. The reason for this other Treating Physician’s Statement went unexplained at the hearing. According to a medical record, Dr. Pladziewicz is Mr. Holland’s cardiologist, and Dr. Tee is his primary care doctor. (Pet. ex. 1, p. 51.) [↑](#footnote-ref-1)
2. This was the day after Mr. Holland left the Malden Police Department. [↑](#footnote-ref-2)
3. Mr. Holland testified that the police commissioner permitted him to modify his work duties. (Tr. 31.) *See also* Tr. 23. If true, it does not mean that the police commissioner had the *authority* to grant that permission. And if the police commissioner had the authority to and did grant that permission, it may or may not be a defense for Mr. Holland in other fields of law, such a criminal, contract, or civil service law. It is not relevant to Mr. Holland’s application for accidental disability retirement benefits. No one gave Mr. Holland permission to violate or evade Chapter 32 of the General Laws. [↑](#footnote-ref-3)